

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

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FILE: B-181574

DATE: June 9, 1975

MATTER OF: Cosa Corporation

DIGEST:

Revision of solicitation requirement, which, although ambiguous, excluded protester's product under any reasonable interpretation must, under 4 C.F.R. § 20.2(a), be protested prior to deadline for submission of proposals, and protest after deadline is untimely.

In Cosa Corporation, B-181574, November 29, 1974, our Office denied as untimely, under 4 C.F.R. § 20.2(a) (1974), the Cosa Corporation (Cosa) protest under request for proposals No. DAAA25-74-R-0468, issued by the United States Army Frankford Arsenal, Philadelphia. Cosa requests that we reconsider our November 29 decision and make a determination that the protest was filed timely. Cosa states that, in view of its efforts to have the specification modified so that it might offer its machine, it believed the change in machine production capability from 100 to not less than 70 percent of each component in one complete cycle was made to permit Cosa to compete.


On June 13, three days after the deadline for submission of initial proposals, Cosa was told in a telephone call (confirmed by telegram dated June 14) that its machine did not meet the 70-percent requirement and that it could modify its proposal accordingly if it so desired. The date for receipt of best and final offers was set for June 18. On June 17 Cosa requested permission to discuss the 70-percent requirement with Frankford Arsenal personnel. A meeting between such personnel and Cosa was held on June 18. At the meeting Cosa was told that the requirement was defined as 70-percent completion measured by time. Cosa stated that it was impossible to revise its proposal to comply with the definition. Cosa subsequently filed a protest, received on June 24, with our Office. We concluded that the protest was untimely.

Cosa's position appears to be that since it could reasonably have concluded that the specification change was made to permit its type of machine to compete, it had no reason to protest until it was advised subsequent to the closing date for submission of proposals that its machine did not meet the specification requirements. However, the Army stated, in its report of September 13, 1974, that while the modified requirement may have been subject to a number of reasonable interpretations, Cosa's machine could not qualify under any of them. The Army conclusion has not been refuted by Cosa.

While conversations between representatives of Cosa and the Army may have led Cosa to conclude that the specification revision was intended to permit it to compete, those conversations could not serve to modify the language of the subsequent solicitation. If, as appears to be the case, the Cosa machine could not meet the specification under any reasonable interpretation, Cosa could not assume that its product could compete despite the specification language. Obviously, in the case of any conflict, the specifications--not Cosa's interpretation of the earlier conversation--would control, and the time to contest the specification was before the deadline for submission of proposals.

Accordingly, our decision of November 29, 1974, is affirmed.

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Comptroller General
of the United States